

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3145 of 2015

Date of Decision: 21.03.2016

Sham Lal

... Petitioner(s)

Versus

Sumitra Devi and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Inderjeet Singh, Advocate
for the petitioner(s).

Mr. Udit Garg, Advocate
for respondents No.1 to 4.

Shekher Dhawan, J.

Present petition is challenge to the order dated 17.4.2015, passed by learned Civil Judge (Junior Division), Bilaspur, whereby application for appointment of Local Commissioner, having been filed by defendants No.2 to 4, was dismissed in a suit for possession of land.

Learned counsel for the petitioner submitted that the Court below has not considered the correct facts because intention of the petitioner was just to assist the Court to arrive at factual decision and

demarcation report was necessary in that regard by way of appointment of Local Commissioner. But the Court below dismissed the said application.

Learned counsel for the respondent submitted that the present petition against order dated 17.4.2015 is not maintainable in view of the judgment rendered by the Division Bench of this Court in ***Harvinder Kaur and Another v. Godha Ram and Another 1979 PLJ 562.***

While arguing on the point of maintainability of present petition under Article 227 of the Constitution of India, learned counsel for the petitioner submitted that exercise of revisional jurisdiction in such a case was taken away by the proviso inserted under Sub-Section (1) of Section 115 CPC. But this Court can certainly revise the order of its subordinate Courts by issuing a writ of certiorari where it finds jurisdictional error or a manifest injustice caused to the party which is not capable of correction at any later stage of the proceedings. On this point, reliance was placed upon the judgment rendered by the Hon'ble Supreme Court in ***Surya Dev Rai v. Ram Chander Rai & Others 2004(1) RCR (Civil) 147.***

On the same point, reliance was placed upon the judgment of the Hon'ble Apex Court in ***Salem Advocate Bar Association, Tamil Nadu v. Union of India 2005(3) RCR (Civil) 530***, wherein it was observed that power under Articles 226 & 227 of the Constitution of India is always in addition to the revisional jurisdiction conferred on the Court. Curtailment of revisional jurisdiction of the High Court under

Section 115 CPC does not take away and could not have taken away the constitutional jurisdiction of the High Court.

Learned counsel for the petitioner also placed reliance upon the view take by the coordinate Bench of this Court in ***Roshan Lal v. Jai Singh and Others 2015(4) RCR (Civil) 1032***, wherein it was observed that appointment of Local Commissioner by Court for inspection of property shall be seen as an extended arm of the Court and as officer of the Court. If neither of the parties have any objection to the report, the Court would simply act on the report to the extent that the report is relevant for adjudicating on the controversy involved in the suit. On the same point, reliance was placed upon the view taken by the coordinate Benches of this Court in ***Ran Singh and Another v. Jagir Singh etc. 2015(2) PLR 421, Banarsi Das v. Sardha Ram and Others 2015(4) Law Herald 3532*** and ***Dalip Kumar v. Amarjeet Singh and Another 2015(1) Law Herald 595***.

Having considered the submissions made by learned counsel for the parties and having gone through the controversy involved in the case, this Court is of the considered view that primarily it is for the trial Court to see whether appointment of Local Commissioner shall help the Court to arrive at a factual decision or in the alternative evidence available on the file is sufficient to decide the controversy. As regard to maintainability of the present petition and constitutional power of this Court under Article 227 of the Constitution of India, there is no dispute that this Court, having supervisory power of control of subordinate Courts in the State, certainly have power to set aside the

order passed by the subordinate Court if the same lacks jurisdiction or the interest of justice require that the same should be set aside. However, power under Article 227 of the Constitution of India cannot be and should not be exercised by this Court in each and every matter. As such, the facts of the case in hand are distinguishable from the decision of the Hon'ble Apex Court in case ***Surya Dev Rai v. Ram Chander Rai*** (*supra*). This Court say so keeping the facts and controversy involved in the case in hand.

In the present case, the Court below, in its order, has already observed that the evidence available on the file is sufficient to decide the controversy and it is not the duty of the Court to collect evidence for the parties and for that purpose, the Court below has made reference to the entries in the revenue record as well.

Similar matter was before this Court in case ***Smt. Ulfat v. Hardeep Singh 2012(5) RCR (Civil) 753***, wherein identical view was taken that it is not the duty of the Court to collect evidence for the parties and Local Commissioner should not be appointed to report party in possession of property in dispute and if the Court has taken such a view, the same order should not be interfered with by invoking constitutional powers of this Court under Article 227 of the Constitution of India. Identical view was taken by the Division Bench and coordinate Benches of this Court in ***Bant Singh alias Balwant Singh and Another v. Raghubir Singh and Others 2008(4) RCR (Civil) 260***, ***Sumer Chand Jain v. Vishnu Bhagwan Mangla 2006(2) RCR (Civil) 445***, ***Rajiv Kumar Batra v. Kashmiri Lal Sika 2010(6)***

RCR (Civil) 37, and Ganpat v. Satvir and Others 2013(1) Law Herald 521.

In view of above, present petition is dismissed being not maintainable and also being devoid of any merit.

**(Shekher Dhawan)
Judge**

March 21, 2016
"DK"